

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On Its Own Motion	:	
-vs-	:	09-0053
Global NAPs Illinois, Inc.	:	
	:	
Failure to maintain statutorily-mandated	:	
qualifications for certification.	:	

PROPOSED ORDER

By the Commission:

I. Introduction – the Initiating Order.

On January 22, 2009, the Illinois Commerce Commission entered an Order that opened the instant proceeding. This Initiating Order observed that Global NAPs Illinois, Inc. (“Global”) a telecommunications carrier, had been granted certificates of service authority to provide facilities-based interexchange telecommunications services in Illinois pursuant to Section 13-403 of the Public Utilities Act (“Act”); resale of local and interexchange telecommunications services pursuant to Section 13-404 of the Act, and facilities based local exchange telecommunications services in Illinois pursuant to Section 13-405 of the Act. 220 ILCS 5/13-403, 404, and 405. The record in another pending proceeding, however, raised the question as to whether Global has the financial resources and the managerial abilities required under the Act to maintain certification. Both the gravity and the nature of the evidence and arguments set out in the Docket 08-0105 proceeding taken together with briefing provided by the Administrative Law Judge (“ALJ”), led the Commission to conclude that there was good cause to initiate this citation proceeding and it was so directed.

II. Procedural History.

Pursuant to the rules and regulations of the Commission a status hearing was held in the matter on February 20, 2009. On that date, the Administrative Law Judge granted the Petition to Intervene filed by AT&T Illinois. Further discussions had at that hearing left the parties unable to agree on the scope of the proceeding and the procedures to be followed. The ALJ adopted a schedule that would have Staff file a “scope of issues statement” on March 6, 2009. And, formal responses to Staff’s statement were to be filed by Global and AT&T Illinois on March 20, 2009. Each of these filings was timely made by the parties and, on April 27, 2009, there was served on each of them a Notice of ALJ Ruling in the matter. This ruling, in part, directed Global to

make testimonial and documentary filings in support of its position on May 15, 2009 and to have the nature of its proofs be guided by, and responsive to, the types of demonstrations outlined in Staff's Scope of Issues Statement as was deemed reasonable by the ALJ.

III. New Developments – Global NAPs Illinois' Motion.

On May 13, 2009, Global NAPs Illinois filed a Motion to Withdraw Certificates of Local Exchange and Interexchange Service Authority and to Dismiss this Proceeding.

On May 18, 2009, Staff filed a response to the Motion. On May 20, 2009, a status hearing was held that took note of the new developments in the proceeding and set a schedule going forward. Also, on May 20, 2009, AT&T Illinois filed its response to the Motion. On June 16, 2009, Global filed its formal Reply.

IV. Positions on the Motion.

Global points out that it seeks to voluntarily relinquish the certificates of service authority granted to it in the Order for Docket 01-0445. As such, Global asserts, the purpose of this proceeding, i.e., to determine if it has maintained the criteria necessary to retain its certificates, is now rendered moot. As there is nothing left to be litigated, Global asks that the instant proceeding be dismissed.

Staff raises concerns based on its belief that nothing prevents Global from re-filing for certificates of service with the Commission at another time. If this were to happen, and Global does file for certificates of service, Staff requests that Global be required to demonstrate all of the showings set forth in Staff's Scope of Issues Statement filed on March 6, 2009 in this proceeding before any such certificates of services are granted. In addition, if Global were to re-file for certificates of service, Staff requests that the Commission require Global to demonstrate that it has satisfied the judgment that was entered against it in Docket 08-0105.

AT&T Illinois agrees that the grant of the motion at hand be conditioned upon a requirement that, in the event Global Illinois were to re-file to obtain certificates of service authority, it must: (1) demonstrate all of the showings set out in Staff's Scope of Issues Statement filed on March 6, 2009; and, (2) demonstrate that it has satisfied the judgment against it in the Order for Docket 08-0105. AT&T Illinois points out that no stay was granted of that judgment by the Commission and Global has not shown that a stay was ordered by the authority of any court. In addition, AT&T Illinois urges the Commission to make clear that these requirements extend to any successor, assign, or affiliate of Global Illinois.

Global objects to the conditions that the Staff seeks to impose on any future filing by Global for certificates of service authority. If it were to seek new certificates, Global maintains that it will need to meet the criteria set forth in the Public Utilities Act at that time. And, it observes that Staff will be free to raise whatever issues it believes are relevant and consistent with the current law. As such, Global contends that the

Commission should not prejudice the evidence needed in any future case by imposing a set of conditions in the order dismissing this proceeding.

Further, according to Global, the requirement that Global demonstrate that it has satisfied the judgment against it in Docket 08-0105 is entirely inappropriate because Global has taken an appeal of the Commission's decision to the United States District Court, Northern District of Illinois, Eastern Division, Docket No. 09-cv-03113. Depending upon the resolution of that appeal, Global would have it be considered that the Commission's order may not be in effect when and if Global files a request for new certificates. For these reasons, Global asks that its motion to withdraw its certificates of local exchange and interexchange service authority be granted and that this proceeding be dismissed, without imposing any of the conditions requested by the Staff.

V. Commission Analysis and Conclusion.

According to the Motion filed by Global on May 13, 2009, it is asking the Commission to provide two forms of relief, to wit:

1. To allow Global to withdraw its Certificates of Local Exchange and Interexchange Service Authority; and,
2. To dismiss the instant proceeding

The Commission considers each request separately, and on the basis of the record facts and arguments put before us.

- **The Global request to withdraw certifications.**

In determining whether to authorize a withdrawal/cancellation of certificates, the Commission generally considers the effect on customers and the public interest. At this time, Global contends, it has no customers in Illinois and is not providing any telecommunications services. As such, Global argues, withdrawal of its certificates will not deprive Illinois customers of any necessary telecommunications service and is not otherwise contrary to the public interest.

These allegations by Global are unopposed and neither Staff nor AT&T Illinois object in any way to the request for withdrawal. As a result, there is nothing before the Commission to show harm to any customers or the public interest as an outcome of granting Global's request. On this basis, the Commission authorizes the withdrawal of each of the three certificates of service authority granted to in Docket 01-0445. These certificates are cancelled effective on the date of this Order.

- **The Global request to dismiss the instant proceeding.**

A motion to dismiss is generally directed to the sound discretion of the Commission which must consider the nature of the request in light of the surrounding

circumstances. The issue here, as Global itself recognizes, concerns its fitness to maintain its certificates of service authority.

We agree with Global that underlying issue in this proceeding, i.e., Global's fitness to maintain its certificates, is moot once those certificates are voluntarily surrendered by Global and cancelled by the Commission. At the same time, however, we believe that the factors outlined in Staff's Scope of Issues Statement as being critical to the question for this proceeding, are apt to remain relevant to any future applications involving Global any of its successors, assign, or affiliates.

In other words, what goes away by virtue of Global's voluntary relinquishment of its certificates may well come back into focus in the event that Global or any of its successors, assigns, or affiliates seek new certificates. And, that is not necessarily owing to this proceeding per se, but to the basic criteria for certification and the attendant information that needs to be carefully and fully scrutinized by the Commission when service authority is being sought.

It is well-evident that the Commission's application process requires full disclosure by the applicant of any circumstances that bear on its suitability for certification. And, the Commission looks to the applicant for certain relevant and telling information. For example, one of the questions in the standard application form asks:

10. Has the Applicant, or any principal in Applicant, been denied a Certificate of Service or had its certification revoked or suspended in any jurisdiction in this or another name?

To be sure, the application form assumes that the Applicant is new to Illinois. If, however, the Applicant has held a certificate from this Commission at any prior time, a revocation or suspension action, or the initiation of a citation proceeding (even if not concluded), are all matters of the same general nature and thus, must be disclosed.

Still another question on the application form asks:

11. Have there been any complaints or judgments levied against the Applicant in any other jurisdiction?

It would be wrong for an Applicant to read the question literally and fail to disclose a complaint or judgment in this jurisdiction or the circumstances thereof. Most assuredly, the entry of a judgment against a potential Applicant in Illinois, and the prompt payment thereof or the stay of judgment, or the reversal of judgment, are facts and circumstances just as relevant to the Commission as a complaint or judgment levied against the Applicant in another jurisdiction.

As such, the conditions to the dismissal of the instant proceeding urged on us by Staff and AT&T Illinois are embraced by the application process itself and the duty of the applicant to disclose all material and relevant matters bearing on the request for service authority.

Simply put, in any application seeking a certificate of service authority, Global NAPs Illinois, Inc., its successors, affiliates, or assigns, will need to demonstrate to the Commission that the judgment entered in Docket 08-0105 has been satisfied or otherwise provide an explanation as to why that is not the case.

Further, in any application seeking a certificate of service authority, Global NAPs Illinois, Inc., its successors, affiliates, or assigns, will need to inform the Commission of both the Order entered in this citation proceeding/withdrawal of certificates matter, and of the Order entered on the complaint proceeding in Docket 08-0105.

VI. Findings and Orderings Paragraphs.

The Commission, having reviewed the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) the Commission has jurisdiction over Global NAPs Illinois, Inc., and the subject matter herein as set out in the Initiating Order for this proceeding.;
- (2) the Initiating Order for this proceeding, entered on January 22, 2009, states that Global NAPs Illinois, Inc. had been granted certificates of service authority to provide telecommunications service pursuant to Sections 13-403, 404 and 404 of the Public Utilities Act ("Act") ;
- (3) the record in this proceeding, as referred to in the Initiating Order of January 22, 2009, reflected good cause for the Commission to believe that Global NAPs Illinois, Inc. no longer possesses "sufficient technical, financial and managerial resources and abilities" that are statutorily required under Sections 13-403, 13-404, and 13-405 of the Act and, thus, it was required of Global NAPs Illinois to show cause why revocation action on its certification should not be taken;
- (4) the ruling of the ALJ issued to the service list on April 27, 2009 established a reasonable process and a time by which Global would proceed with its initial showing in this proceeding;
- (5) on May 13, 2009, Global NAPs Illinois filed a Motion to Withdraw Certificates of Local Exchange and Interexchange Service Authority (granted it in Docket 01-0445) and to Dismiss this Proceeding;
- (6) there is nothing of record to show that any customers would be harmed or that it would other be contrary to the public interest if the motion to withdraw certificates is granted and thus, it should be granted;
- (7) Global NAPs Illinois, Inc. should file its 2009 Annual Report within 60 days of the date of this order;

- (8) wherein the motion to withdraw certificates is granted, the proceeding at hand is rendered moot and thus, should be dismissed;
- (9) in the event that Global NAPs Illinois, Inc., its successors, affiliates, or assigns were to file for certificates of service authority with the Commission, it will be incumbent upon such applicant in the course of the normal application process, to demonstrate to the Commission that the judgment entered against Global NAPs Illinois, Inc. in Docket 08-0105 has been satisfied or otherwise provide an explanation as to why that is not the case;
- (10) in any application seeking a certificate of service authority, Global NAPs Illinois, Inc., its successors, affiliates, or assigns, will also need to inform the Commission of both the Order entered in this citation proceeding/withdrawal of certificates matter, and of the Order entered on the complaint proceeding in Docket 08-0105.

IT IS THEREFORE ORDERED by the Illinois Commerce Commission that the motion of Global NAPs Illinois, Inc., to withdraw the Certificates of Local Exchange and Interexchange Service Authority issued to it in Docket 01-0445, is granted.

IT IS FURTHER ORDERED that Petitioner shall file its 2009 Annual Report within 60 days of the date of this Order in compliance with Finding (7) above.

IT IS FURTHER ORDERED that, by virtue of the granting of the motion to withdraw Certificates of Local Exchange and Interexchange Service Authority, this proceeding has been rendered moot and is hereby dismissed.

IT IS FURTHER ORDERED that in the event that Global NAPs Illinois, Inc., its successors, affiliates, or assigns were to file for certificates of service authority with the Commission, it will be incumbent upon such applicant in the course of the normal application process, to demonstrate to the Commission that the judgment entered against Global NAPs Illinois, Inc. in Docket 08-0105 has been satisfied or otherwise provide an explanation as to why that is not the case;

IT IS FURTHER ORDERED that in any application seeking a certificate of service authority, Global NAPs Illinois, Inc., its successors, affiliates, or assigns, will also need to inform the Commission of both the Order entered in this citation proceeding/withdrawal of certificates matter, and of the Order entered on the complaint proceeding in Docket 08-0105.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.

DATED:

July 1, 2009

BRIEFS ON EXCEPTIONS DUE:

July 7, 2009

REPLY BRIEFS ON EXCEPTIONS DUE:

July 10, 2009

Eve Moran,
Administrative Law Judge